GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Infrastructure & Investment Department – APMB - *"Development of Commercial Port at Kona Village, Thondangi Mandal, East Godavari District under PPP mode (DBFOT)"* by M/s Kakinada Gateway Port Ltd., at Kona village, Thondangi Mandal, East Godavari Dist.–Extension of Commercial Operation Date (COD) for 611 days on the grounds of delay in the fulfilment of the conditions precedent (CP) and its prerequisites by the authority as specified in the Concession Agreement in force- Orders - Issued.

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INFRASTRUCTURE & INVESTMENT (PORTS) DEPARTMENT

G.O.Ms.No.11

Dated:15.03.2024

Read the following:

1. G.O.Ms.No.20, E,I&I(Ports) Dept. dated 26.06.2018
2. Concession Agreement dated 21.11.2018
3. G.O. Ms.No. 3, I & I (Ports) Dept, dt 10.03.2021
4. G.O.Ms.No.6, I&I(PORTS) Dept, Dt.08-07-2021
5. Govt. Memo No.227/Ports.II/2016, dated 07.05.2022
6. Minutes of State Investment Promotion Board (SIBP) meeting held on 11.07.2023
7. G.O.Ms.No.10, I&I (Ports) Dept., dated 21.07.2023
8. From the CEO, APMB Lr.No.SE/PP2/3502/2011/KGPL, dt.06.10.2023
9. Remarks of CEO, APMB in e-office computer No.88023,dt.19.02.2024

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ORDER:

In the reference 1st read above, Govt. have issued orders awarding the Concession to M/s.Kakinada SEZ Ltd., for *"Development of Commercial Port at Kona Village, Thondangi Mandal, East Godavari District under PPP mode (DBFOT)"*. The Director of Ports (on behalf of Government of Andhra Pradesh) and M/s.Kakinada Gateway Port Limited (SPV of Kakinada SEZ Ltd) have concluded the Concession Agreement on 21-11-2018 for development of Commercial Port at Kona Village. In the reference 4th read above, extending the time for Financial Closure *up to 19.11.2021 or up to fulfilment of the all the Conditions Precedents (CPs)* both by authority and the concessionaire whichever earlier. In the reference 5th read above, Government have declared the Appointed Date in line with Concession Agreement (CA) with a condition that the Concessionaire shall fulfil all the conditions and any failure, thereof, give rise for revisiting the agreement in terms of Clause 24.2 and ensure that APMB shall propose a new milestone based timelines both for financial investment and project implementation and monitor the same directly and through Independent Engineer appointed for the said Project.

2. In the reference 8th read above, the CEO,APMB has submitted that M/s. KGPL vide their letter dated.25-09-2023 have stated that they had vide multiple submissions tabled their requests for fulfilment of the conditions precedent (CP) (as per Clause 4.1 of CA) and its prerequisites by the authority as specified in the CA in force. The authority shall fulfil the following key compliances that are enlisted in the CA(in line with the provision of Cl. 4.1.2 & 4.1.3 of the CPs).

i. *Procure for the Concessionaire the Right of Way / Access to the Authority's Site in accordance with the provisions of Clauses.*
ii. *Provide permission / license to enter upon and utilize the area within the Port boundaries for the construction pursuant to and in accordance with the Agreement.*
iii. *Execute the Authority's Lease Agreement in favour of the concessionaire and handed over to the Concessionaire the Possession of the Leased Site*
iv. *Enter into the State Support Agreement (in the form attached hereto in Schedule X and conterminous with the Agreement) with the Concessionaire.*
v. *Fulfill the below obligations as listed in the State Support Agreement:*
    a. *Exemption of GST and Entry tax on all inputs required for project construction until the commercial operations date*
    b. *Exemption from payment of Seigniorage fees i.e., cess on minor minerals and labour for project construction activities until the commercial operations date.*
    c. *Provide land, on the terms specified in the Concession Agreement, for external infrastructure viz. road connection the nearest National Highway or State Highway to the port boundary as per Clause 6.2.1 of the Concession Agreement and facilitate development of a railway line connection the port to the nearest railway station on the regional railway network.*
    d. *Facilitate the provision of external infrastructure viz. water supply up to port boundary and power supply from nearest substation up to port boundary before the Appointed Date.*

3. M/s KGPL stated that present Commercial Operation Date (COD) i.e. 16.11.2024 is based on a Construction period of 36 months (or 1095 Days) from the Appointed Date considering the fulfilment of above parameters by the authority before the appointed date and they have also commenced the construction works although the key CPs were yet to be achieved by the Authority and this has put additional financial burden on the Concessionaire.M/s.KGPL have also stated that the Authority have issued the instructions regarding the exemption of Seigniorage fee and the reimbursement of SGST on 21.07.2023 in GO 7th read above after passing of 611 Days from the Appointed Date. The following CPs are yet to be put in place by the Authority:

i. Registration of Sea accreted land.
ii. State Support Agreement
iii. Water & Power Connectivity provision up to battery limit of port to be established as per the SSA

The status of these CPs, as furnished by CEO, APMB is given at **Annexure-1.**

4. Stating that fulfilment of the above CP's has a direct bearing on the COD of the Project and the CPs are an integral part of the CA and any delays in fulfilment of any of the CPs would automatically entail a suitable extension in the agreed time frames as per the CA,M/s KGPL have proposed the following,

i. *Issue necessary Extension of Time to the extent of 611 days (from 16th Nov 2024) for the revised COD in the present circumstances and for the reasons solely attributable to the authority.*

ii. Meanwhile, make arrangements for fulfillment of the balance CPs as stated above.

5. In this regard, the proposals of CEO, APMB have been examined and Govt vide GO 7th read above have issued orders providing 100% reimbursement of SGST paid on the inputs to M/s. KGPL till commencement of commercial operations for Phase – I Construction of the Project as per the Industrial Development Policy (IDP) 2023-2027 and in terms of Clause 2.4 (i) Schedule X of State Support Agreement of the Concession Agreement. Govt have also accorded exemption from payment of Seigniorage fee, District Mineral Fund (DMF), Merit and consideration amount of Rs 71.11 Crores to M/s. KGPL till commencement of Commercial Operations for Phase I Construction of the Project as per terms of Clause 2.4 (iii) Schedule X of State Support Agreement of the Concession Agreement.

6. The CEO, APMB vide reference 9th read above has furnished the present status of each of all Conditions Precedent (**Annexure –2**) to the Government for taking further action in the matter. The CEO,APMB has submitted that the Concessionaire have submitted the Construction Schedule/ Project implementation milestones and commenced the works. Further, APMB have appointed Independent Engineer M/s. EGIS India Pvt Ltd vide Agreement Dt.28.09.2022 and the Project implementation is being monitoring continuously by Independent Engineer and the report of IE on the status of physical progress of the Project is given at Annexure-3.

7. Further, CEO, APMB informed that the Concessionaire M/s KGPL letter Dated 13-02-2024 have submitted the following documents:

a. Financial Investment Plan
b. Project Completion Schedule as per CA(schedule-G)
c. Construction timeline Schedule as per proposed EOT

8 The Independent Engineer M/s Egis India Consulting Engineers have reviewed the revised construction schedule submitted by the Concessionaire and furnished the certain observations vide Lr. Dated.15-02-2024, which are given at **Annexure-3**. Accordingly, M/s KGPL vide letter Dated.15-02-2024 have submitted the revised Construction schedule duly incorporating the details as per Independent Engineer remarks. Again, the Independent Engineer M/s EGIS India consulting Engineers vide Lr. Dated.16-02-2024have reviewed the revised Construction schedule submitted by the Concessionaire and stated that the same is acceptable for the process of proposed EOT request made by the Concessionaire.

9. Therefore, the CEO, APMB has requested the Government to examine and consider the request of the Concessionaire for grant of Extension of Commercial Operation Date (COD) for 611 days from 16th November 2024 subject to the following conditions:

1. The Concessionaire shall submit revised milestone-based timelines both for financial investment and project implementation within 30 days from the date of receipt of Extension of Commercial Operation Date (COD) for 611 days from 16th November 2024.

2. The Concessionaire shall adhere to the revised Milestones both for financial investment and project implementation scrupulously and ensure to complete the Project as per Milestones. If the same is not achieved as per revised Milestones, action will be initiated in terms of the Clause 12.5.2 & 12.5.3.

10. Government after careful examination, accepted the request of the Concessionaire i.e M/s. Kakinada Gateway Port Ltd., and hereby extended time for Commercial Operation Date (COD) for 611 days from 16th November 2024, on the grounds of delay in the fulfilment of the conditions precedent (CP) and its prerequisites by the authority as specified in the Concession Agreement in force for *"Development of Commercial Port at Kona Village, Thondangi Mandal, East Godavari District under PPP mode (DBFOT)"*, subject to the following conditions:

1. The Concessionaire shall submit revised milestone-based timelines both for financial investment and project implementation within 30 days from the date of receipt of Extension of Commercial Operation Date (COD) for 611 days from 16th November 2024.

2. The Concessionaire shall adhere to the revised Milestones both for financial investment and project implementation scrupulously and ensure to complete the Project as per Milestones. If the same is not achieved as per revised Milestones, action will be initiated in terms of the Clause 12.5.2 & 12.5.3.

11. The Chief Executive Officer, APMB shall take all necessary further action in the matter accordingly.

12. This order issues with the concurrence of Finance Department, vide their U.O.No. FIN-45027/211/2016-SO(FMU(I.E.M)-FINANCE, dated 11.02.2024.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

N.YUVARAJ
SPECIAL CHIEF SECRETARY TO GOVERNMENT(FAC)

To

The Chief Executive Officer, APMB, Kakinada.
M/s.Kakinada Gateway Port Limited, Road No.6, Siddartha Nagar, Kakinada, through the CEO, APMB, Kakinada
The Port Officer, Kakinada
Copy to:
The OSD to Special Chief Secretary to Hon'ble CM
The OSD to Hon'ble M(I&I)
The Finance (Exp.FMU-IIEIC) Department (w.r.t Computer No.92649)
The GA(Cabinet) Dept., AP Secretariat.
The PS to Spl.C.S., I&I Department.
Sf/sc(227/Ports.II/2016-88023)

//FORWARDED :: BY ORDER//

SECTION OFFICER

ANNEXURE-1to GO MS NO.11, I&I Dept. dated 15-03-2024

Sl. No	Request of M/s Kakinada Gateway Port Limited	Agreement Clause	Remarks from APMB
1	Registration of Sea accreted land by the authority.	**Article 4.1.2 Conditions precedent required to be satisfied by the authority** : The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 120 (one hundred and twenty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding an additional 90 (ninety) days and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have: d) Executed the Authority's Lease Agreement (in the form attached hereto in Schedule W(B)and coterminous with this Agreement) in favour of the Concessionaire and handed over to the Concessionaire the Possession of the Leased Site;	The Land of Extent of ac.136.13 cents have been handed over to the Concessionaire on 29.10.2021. The District Collector has furnished the Market Value of said land on 25.11.2023. Further KGPL has been requested on 27.11.2023 for concluding the lease agreement for above land and lease deed will be concluded with the Concessionaire shortly.
2	The Concluding of State Support Agreement by the authority.	**Article 4.1.2 Conditions precedent required to be satisfied by the authority** : e) Enter into the State Support Agreement (in the form attached hereto in Schedule X and conterminous with the Agreement) with the Concessionaire.	KGPL have submitted the draft State Support Agreement vide their letter dated 20.11.2023 and Government has been addressed to accord permission to enter in to state support agreement vide letter dated 01.12.2023. Soon after the receipt of the

			Government permission State Support Agreement will be concluded by APMB.
3	Issue necessary Extension of Time to the extent of 611days (from 16 th Nov 2024) for the revised COD as the authority issued the instructions regarding the exemption of Seigniorage fee and reimbursement of SGST on 21 st July 2023 vide GOMS No 10 Infrastructure & Investment (Ports) Department, Dt.21.07.2023.	**Schedule X - State support Agreement Clause 2.4:** i. Exemption of GST and entry tax on all inputs required for project construction until the commercial operations date. ii. Exemption from payment seigniorages fees- i.e cess on minor minerals and labour for project construction activities until the commercial operations date. **Article 12.2 (g) of Concession Agreement:** The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR, Designs and drawings. Provided however the Authority may suitably extend the construction period or provide other relief to compensate for any such delay not attributable to the Concessionaire and which has a Material Adverse Effect	Proposals have been submitted to the Government on 17.08.2022 & 22.12.2022 requesting to accord exemption from sales tax/VAT /GST and entry tax for all inputs required and also to accord exemption from payment of Seigniorage fee/ Cess on minor minerals till commencement of Commercial Operations for Phase I Construction of the Project. Government vide GO Ms No.10 of I & I (Ports) Dept, Dt.21.07.2023 have issued orders providing 100% reimbursement of SGST paid on the inputs to M/s. KGPL till commencement of commercial operations for Phase-I Construction of the Project as per the Industrial Development Policy (IDP) 2023-2027 and in terms of Clause 2.4 (i) Schedule X of State Support Agreement of the Concession Agreement. Thus, there is a delay of 611 days from appointed date in granting exemption from sales tax/VAT /GST and entry tax for all inputs required and also for exemption from

			payment of Seigniorage fee/Cess on minor minerals.
4	Provide Water & Port Connectivity provision up to battery limit of Port to be established as per SSA	**Schedule X - State support Agreement Clause 2.6:** Provide External infrastructure viz road infrastructure connecting to the nearest highway to the port boundary, water supply up to port boundary and power supply from the nearest substation up to the port boundary as per the State support Government which is approximately Rs 200Cr as estimated by the Transaction Advisor (as per G.O.Ms No 20, E,I&I Dept. dated 26.06.2018)	Government have been addressed vide letter dated 01.12.2023 for the allocation of funds for provision of Water & Power Connectivity up to battery limit of Port.

N.YUVARAJ
SPECIAL CHIEF SECRETARY TO GOVERNMENT(FAC)

B. Venkateswarlu
SECTION OFFICER

ANNEXURE-2 to GO MS NO.11, I&I Dept. dated 15-03-2024

S. No	Conditions Precedent as per Concession Agreement	Present Status	Time to fulfill CA
i	Procure for the Concessionaire the Right of Way / Access to the Authority's Site in accordance with the provisions of Clauses.	Right of Way already given	CP has already been fulfilled
ii	Provide permission / license to enter upon and utilize the area within the Port boundaries for the construction pursuant to and in accordance with the Agreement.	Permission provided	CP has already been fulfilled
iii	Execute the Authority's Lease Agreement in favour of the concessionaire and handed over to the Concessionaire the Possession of the Leased Site.	M/s.KGPL has been requested to conclude lease agreement for the Sea Accreted land of Acs.136.13 cents handed over by the Port Officer, Kakinada vide Lr.No.SE/PP2/3502/2011/KGPL, Dt.27.11.2023	This CP will be fulfilled within 1 month of time.
iv	Enter into the State Support Agreement (in the form attached hereto in Schedule X and conterminous with the Agreement) with the Concessionaire.	Government have been requested to accord permission for entering into the State Support Agreement with the Concessionaire M/s.KGPL vide Chief Executive Officer, APMB Lr.No.SE/PP2/3502/2011, Dt. 01.12.2023.	Permission yet to be received from the Govt for concluding State Support Agreement with the Concessionaire. Soon after receipt of the permission from the Govt, State Support Agreement will be concluded and this CP will be fulfilled probably within one month.
*Fulfill the below obligations as listed in the **State Support Agreement** :*			

v a)	*Exemption of GST and Entry tax on all inputs required for project construction until the commercial operations date*	Government vide G.O.Ms.No.10 of I & I (Ports) Dept, Dt.21.07.2023 have issued orders for providing 100% of SGST paid on the inputs to till commercial operations for Phase-1 construction of the Project.	CP has already been fulfilled
v b)	*Exemption from payment of Seigniorage fees i.e., cess on minor minerals and labour for project construction activities until the commercial operations date.*	Govt vide G.O.Ms.No.10 of I& I (Ports) Dept, Dt.21.07.2023 have accorded exemption from payment of Seigniorage fee, District Mineral Fund (DMF), Merit and consideration amount to M/sKGPL till commencement of Commercial Operations for Phase I construction of the Project.	CP has already been fulfilled.
v c)	Provide land, on the terms specified in the Concession Agreement, for external infrastructure viz. road connection the nearest National Highway or State Highway to the port boundary as per Clause 6.2.1 of the Concession Agreement and facilitate development of a railway line connection the port to the nearest railway station on the regional railway network.	**Road Connectivity:** M/s.KGPL have submitted that the proposed takeoff point from nearest National Highway of Chennai to Kolkata which is 12 Kms from the Port. Further, "Construction of Four Lane Access controlled Highway form Vakalapudi Light House to Annavaram (on NH-16) section of NH-516F from Km,0+000 to Km.40+621, in the State of Andhra Pradesh" is proposed under Bharatmala. Time for completion of the said Project is 24 months.	As the Road Project completion period is 24 months, the same can be completed within 611 days of proposed Extension period from 16th November 2024. Hence, further extension beyond 611 days from 16th November 2024 may not be required.
v d)	Facilitate the provision of external infrastructure viz. water supply up to port boundary and power supply from nearest substation up to port boundary before the Appointed Date.	i. **water supply up to port boundary:** M/s.KGPL have submitted that APIIC had allocated 10 MGD of water from Samalkot Canal for Development activities of Kakinada SEZ, Port based Industrial Park. An additional water supply source was identified as water from Godavari River	It is anticipated that this CP can be fulfilled within the proposed extended period 611 days of proposed Extension period from 16th November 2024. Hence, further extension beyond 611 days from 16th November 2024 may not be required

			via the Polavaram Left canal. Further, Kakinada SEZ is setting up a Desalination Plant to cater to the water requirement of the industries in the SEZ region. Therefore, until Government supplies water through any of the above two sources, to ensure continues supply of water, Kakinada SEZ shall temporarily supply water for the construction and operation of Kakianda Gateway Port project from the proposed Desalination Plant. **Source of availability of Power :** A 400KVA substation was proposed by APTRANSCO in the Kakinada SEZ area. This shall serve as the source of power for Kakinada Gateway Port project. Tender have been called for by APTRANSCO for the construction of the substation vide tender e-notice no.e-EHVT-54/2023 dated 27.12.2023. As per the tender notification, the construction duration is 15 months.	As the Construction of Sub Station for providing Power Supply upto the Port Boundary takes 15 months, the same can be completed within 611 days of proposed Extension period from 16th November 2024. Hence, further extension beyond 611 days from 16th November 2024 may not be required.

N.YUVARAJ
SPECIAL CHIEF SECRETARY TO GOVERNMENT(FAC)

SECTION OFFICER

ANNEXURE-3 to GO MS NO.11, I&I Dept. dated 15-03-2024

As per Independent Engineer, the Concessionaire have completed the following as on February 2024:

1. **South Breakwater progress:**

a. South break water core material dumped up to CH1298 m, Top level of Core +3.50m CD & bottom bed of varying levels.
b. The remaining layers laid up to CH 1175 Mtrs up to +4.5m CD.

2. **North Breakwater progress:**
   a. North break water core material dumped up to CH589 m, Top level of Core +3.80 m CD & bottom bed of varying levels laying work in progress.
   b. The remaining layers laid up to CH 450 Mtrs up to +4.0m CD.
3. Total quantity of 96,186Mt of stones have been laid so far for both the Breakwaters
4. So far, the Concessionaire has reported that they have spent Rs 280cr towards project expenditure as against the project cost of Rs 2,123Cr.

N.YUVARAJ
SPECIAL CHIEF SECRETARY TO GOVERNMENT(FAC)

B. Venkatesh
SECTION OFFICER

ANNEXURE-4 to GO MS NO.11, I&I Dept. dated 15-03-2024

a. *Item.No.1. The Breakwater Core and Armour stone dumping is in accordance with the present rate of progress of works at site*

b. *Item.No.2. Dredging and Reclamation Works: The Dredging quantity anticipated is quite huge in view of capital Dredging. The period of dredging is accounted for 25 months it is not clear as how a dredger can work continuously for 25 months at one location. This may be elaborated by Concessionaire.*

c. *Item No.3. Berth Construction: Concessionaire is requested to mention the dimension of the Berth for clear understanding.*

d. *Item No.4, Material handling system: Concessionaire may mention the length of conveyor system. Also they are requested to mention Material Handling equipment they have planned for this project like Ship un-loader, Stacker, Reclaimer, Wagon and Truck Loading station etc.*

e. *Item No.5, Open stack yard: For this item also the breakup of various components shall be given.*

f. *Item No.6, Internal Roads: Details such as Asphalt road or concrete road shall be provided.*

g. *Item No.7, Internal and External Railway: The Detailed Project Report (DPR) for Railways status and approval of DBR by Government etc., shall be mentioned. Also the name of Consultant for railway siding shall also be intimated.*

h. *Item No.8, Onshore infraBuildings: Concessionaire may provide the individual time line for the various building for the various buildings mentioned in the DPR prepared by i-maritime in their report.*

N.YUVARAJ
SPECIAL CHIEF SECRETARY TO GOVERNMENT(FAC)

B. Venkateswarlu
SECTION OFFICER